AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 2647

Introduced by Assembly Members Eduardo Garcia and Medina
(Principal coauthors: Assembly Members Brown, Chu, and Dodd)

February 19, 2016

An act to add Section 18410.3 to, and to add and repeal Sections 12283, 17053.9, and 23622.9 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2647, as amended, Eduardo Garcia. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

Existing federal law allows a New Markets Tax Credit to a taxpayer holding a qualified equity investment in an amount equal to the applicable percentage of the amount paid to the qualified community development entity for investment in low-income communities.

The state Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing state constitutional law governing insurance taxation imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

Existing law establishes the Governor's Office of Business and Economic Development, also known as " GO-Biz," to, among other things, serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

This bill would allow a California New Markets Tax Credit under the Personal Income Tax Law, the Corporation Tax Law, and the law governing insurance taxation, in modified conformity with the federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to $40,000,000 per calendar year. The bill would impose specified duties on the Responsible Tax Credit Administrator (RTCA), to be designated by the Governor, with regard to the application for, and allocation of, the credit. The bill would require the RTCA to establish and impose reasonable fees upon entities that apply for the allocation of the credit, to be deposited in the California New Markets Tax Credit Fund established by the bill, and use the revenue, upon annual appropriation by the Legislature, to defray the cost of applying to and administering the credits, as specified. The bill would only authorize the allocation for these credits for those taxable years for which moneys are appropriated to the RTCA to administer these credits for those taxable years.

Existing law requires any bill authorizing a new personal or corporation income tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements, as provided.

This bill would also include that additional information required for any bill authorizing a new personal or corporation income tax credit.

The bill would provide that its provisions are severable.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) While many areas of California have recovered from the economic and community development impacts of the 2006 Financial Crisis and the 2010 global recession, Californians in a number of communities and neighborhoods are still experiencing their lingering effects. In some cases this has resulted in small and medium businesses in low-income areas lacking sufficient access to capital and technical assistance. Given that the state has many needs and limited resources, moneys from the private sector are necessary to fill this capital and investment gap.

(b) Initially enacted in 2000, the federal government established the New Markets Tax Credit (NMTC) Program, which uses a market-based approach for expanding capital and technical assistance to businesses in lower income communities. The federal program is jointly administered by the Community Development Financial Institutions Fund (CDFI Fund) and the Internal Revenue Service. The NMTC Program allocates federal tax incentives to community development entities (CDE), which they then use to attract private investors who contribute funds that can be used to finance and invest in businesses and develop real estate in low-income communities. Through the 2013–14 funding round, the CDFI Fund had awarded approximately forty billion dollars ($40,000,000,000) in NMTC in 836 awards, including three billion dollars ($3,000,000,000) in American Recovery and Investment Act of 2009 awards and one billion dollars ($1,000,000,000) of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

(c) Since 2003, the NMTC Program has created or retained an estimated 197,585 jobs nationally. It has also supported the construction of 32.4 million square feet of manufacturing space, 74.8 million square feet of office space, and 57.5 million square feet of retail space. The United States Department of the Treasury reports that a secondary benefit is that as these communities develop, they become more attractive to investors, catalyzing a ripple effect that spurs further investments and revitalization.

(d) For every one dollar ($1) invested by the federal government, the NMTC Program generates over eight dollars ($8) of private investment. The NMTC Program catalyzes investment in the most economically challenged areas of the state. Over 75 percent of New Markets Tax Credit investments have been made in highly distressed areas, meaning the household income was less than 60 percent of statewide median income and the poverty rate was higher than 30 percent.

(e) The federal NMTC totals 39 percent of the original investment amount in the CDE and is claimed over a period of seven years (5 percent for each of the first three years and 6 percent for each of the remaining four years). Any investment by any taxpayer in the CDE redeemed before the end of the seven-year period will be recaptured.

(f) Fourteen states in the United States have adopted state programs using the NMTC model including Alabama, Florida, Illinois, Nevada, and Oregon. While some of the programs substantially mirror the federal program, others vary in both the percentage of the credit and some of the policies that form the foundation of the credit. One of the reasons cited for establishing state-level programs is to make a state more attractive to CDEs, which results in increasing the amount of federal NMTCs being utilized in a state. Further, several studies, including a January 1, 2011, case study by Pacific Community Ventures, showed that for every dollar of forgone tax revenue, the federal NMTC leverages twelve dollars ($12) to fourteen dollars ($14) of private investment.

SEC. 2. Section 12283 is added to the Revenue and Taxation Code, to read:

12283. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 17053.9, and Section 23622.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community *and economic* development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-sized businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. RTCA shall administer this program as provided in this section, Section 17053.9, and Section 23622.9.

(b) (1) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, and subject to subdivision (h), there shall be allowed as a credit against the tax described in Section 12201, in an amount determined in accordance with Section 45D of the Internal Revenue Code, relating to the new markets tax credit, as modified in this section.

(2) For the purposes of this section, "RTCA" means the Responsible Tax Credit Administrator, as designated by the Governor.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for "(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates" with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating to qualified community development entity, is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code, relating to special rules for certain organizations, is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term "qualified active low-income community business," as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting "any low-income community in California" for "any low-income community" every place it appears in Section 45D of the Internal Revenue Code.

(B) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (i) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary tenant of the real estate leased from the first business.

(C) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph. This requirement does not apply to a business that is located on land and is controlled by, or under common control with, a federally recognized tribe.

(D) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a nonmetropolitan area, with a median family income that does not exceed 60 percent of median family income for this state, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(E) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(F) A qualified active low-income community business shall not include a sexually oriented business. A "sexually oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance. "Nude" means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(G) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 17053.9, and Section 23622.9 shall be forty million dollars ($40,000,000) per calendar year. The allocation of any undesignated qualified equity investments shall be returned to RTCA by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to RTCA on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against the annual or the cumulative limit.

(B) The references to “the Secretary” in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read “RTCA.”

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(A) The qualified community development entity fails to comply with subparagraph ~~(C)~~ *(D)* of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit.

(B) RTCA shall establish a process, in consultation with the Department of Insurance, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(C) Recaptured qualified equity investments revert back to RTCA and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ *(E)* of paragraph (5) of subdivision (d) by the annual allocation limitation.

(ii) Thereafter, in accordance with the application process.

(D) Enforcement of each of the recapture provisions shall be subject to a six-month cure period.

(d) (1) RTCA shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation, monitoring, and management of the tax credit program authorized by this section.

(2) (A) RTCA shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. RTCA may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines, RTCA shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments, including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph ~~(C)~~ *(D)* of paragraph (5).

(4) (A) Subject to subdivision (h), RTCA shall begin accepting applications on or before May 15, 2017, and shall award authority to designate qualified equity investments annually through ~~2022.~~ *2021*.

(B) In the instance where RTCA determines that an application is incomplete, the qualified community development entity shall be given five business days to provide the omitted information.

(5) (A) In the 2017 awards cycle, RTCA shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (2) of subdivision (c) in the order applications are received by RTCA. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2018 to ~~2022~~ *2021* award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the discretion of RTCA, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) RTCA shall award up to 40 percent of the authority to designate qualified equity investments in the 2018 to ~~2022,~~ *2021*, inclusive, award cycles, to qualified community development entities on a competitive basis that meets the following criteria:

(i) Awards shall be reviewed using blind scoring and a review committee that is composed of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity.

(ii) A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

~~(iii) Applications for awards shall include a commitment to make at least 15 percent of qualified community development investments to a qualified community development entity with the assistance of a nonprofit organization, as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this clause, the following shall apply:~~

~~(I) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not~~

~~received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.~~

~~(II) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.~~

~~(iv)~~

(iii) Priority shall be provided to both of the following:

(I) Applications that commit to addressing the hardest to serve and undercapitalized lower income populations.

(II) Applications that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state. These applications shall demonstrate how their investment activity provides a scalable economic development model.

(D) For applications described in subparagraphs (A) and (B), applications for awards shall include a commitment to make at least 15 percent of qualified community development investments to a qualified community development entity with the assistance of a nonprofit organization, as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this subparagraph, the following shall apply:

(i) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(ii) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered

with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.

~~(D)~~

(E) (i) For applications described in subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, RTCA shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, RTCA shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

~~(E)~~

(F) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify RTCA within 30 calendar days of such transfer and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

~~(F)~~

(G) Within 200 calendar days of RTCA sending notice of certification, the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph ~~(E),~~ *(F),* shall provide RTCA with evidence of the receipt of the cash investment within 205 calendar days of

the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* does not receive the cash investment and issue the qualified equity investment within 200 calendar days of RTCA sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to RTCA for certification. Lapsed certifications revert back to RTCA and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ *(E)* under the annual allocation limitation of forty million dollars ($40,000,000) in paragraph (4) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

~~(G)~~

(H) A qualified community development entity that issues qualified equity investments shall notify RTCA of the names of taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to RTCA that provides documentation as to the investment of at least 85 percent of the funds being deployed within one year in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph ~~(C)~~ *(D)* of paragraph (5).

~~(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply to reinvestments of redeemed qualified low-income investments.~~

~~(v)~~

(iv) Any other information required by RTCA as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to RTCA during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(viii) Any other information requested by RTCA.

(e) (1) In the case where the credit allowed by this section exceeds the tax described in Section 12201, the excess may be carried over to reduce that tax in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(3) The credit allowed under this section may be in addition to any credit allowed under Section 45D of the Internal Revenue Code.

(f) RTCA shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Insurance Commissioner may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Insurance Commissioner shall have access to any documentation held by RTCA relative to the application and reporting of a qualified community development entity.

(2) A qualified community development entity shall provide RTCA with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualified community development entity, pursuant to this section. RTCA shall provide this information to the Insurance Commissioner in a manner determined by the Insurance Commissioner.

(h) (1) The credit authorized by this section shall only be allowed for those taxable years for which moneys are appropriated to RTCA to administer the California New Markets Tax Credit pursuant to 18410.3 for that taxable year. The appropriation shall specifically identify the California New Markets Tax Credit.

(2) For those taxable years for which those moneys are appropriated pursuant to paragraph (1), RTCA shall post notice of the appropriation on the homepage of its Internet Web site and send notice of such appropriation to the Secretary of State and the Legislative Counsel.

(i) This section shall be repealed on December 1, 2022.

SEC. 3. Section 17053.9 is added to the Revenue and Taxation Code, to read:

17053.9. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 12283, and Section 23622.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-sized businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. RTCA shall administer this program as provided in this section, Section 12283, and Section 23622.9.

(b) (1) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, and subject to subdivision (h), there shall be allowed as a credit against the “net tax,” as defined in

Section 17039, in an amount determined in accordance with Section 45D of the Internal Revenue Code, relating to the new markets tax credit, as modified in this section.

(2) For the purposes of this section, "RTCA" means the Responsible Tax Credit Administrator, as designated by the Governor.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for "(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates" with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating to qualified community development entity, is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code, relating to special rules for certain organizations, is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term "qualified active low-income community business," as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting "any low-income community in California" for "any low-income community" every place it appears in Section 45D of the Internal Revenue Code.

(B) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (i) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary tenant of the real estate leased from the first business.

(C) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph. This requirement does not apply to a business that is located on land and is controlled by, or under common control with, a federally recognized tribe.

(D) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a nonmetropolitan area, with a median family income that does not exceed 60 percent of median family income for this state, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(E) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(F) A qualified active low-income community business shall not include a sexually oriented business. A "sexually oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance. "Nude" means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(G) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 12283, and Section 23622.9 shall be forty million dollars ($40,000,000) per calendar year. The allocation of any undesignated qualified equity investments shall be returned to RTCA by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to RTCA on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with clause (ii) of subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against the annual or the cumulative limit.

(B) The references to "the Secretary" in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read "RTCA."

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code, relating to credit recapture amount, is modified to substitute "Section 19101 of this code" for "Section 6621."

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(i) The qualified community development entity fails to comply with subparagraph ~~(C)~~ *(D)* of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit.

(ii) RTCA shall establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(iii) Recaptured qualified equity investments revert back to RTCA and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ *(E)* of paragraph (5) of subdivision (d) by the annual allocation limitation.

(II) Thereafter, in accordance with the application process.

(iv) Enforcement of each of the recapture provisions shall be subject to a six-month cure period.

(d) (1) RTCA shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation, monitoring, and management of the tax credit program authorized by this section.

(2) (A) RTCA shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. RTCA may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines, RTCA shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments, including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph ~~(C)~~ *(D)* of paragraph (5).

(4) (A) Subject to subdivision (h), RTCA shall begin accepting applications on or before May 15, 2017, and shall award authority to designate qualified equity investments annually through ~~2022.~~ *2021.*

(B) In the instance where RTCA determines that an application is incomplete, the qualified community development entity shall be given five business days to provide the omitted information.

(5) (A) In the 2017 awards cycle, RTCA shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (2) of subdivision (c) in the order applications are received by RTCA. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2018 to ~~2022~~ *2021* award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the discretion of RTCA, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) RTCA shall award up to 40 percent of the authority to designate qualified equity investments in the 2018 to ~~2022,~~ *2021,* inclusive, award cycles, to qualified community development entities on a competitive basis that meets the following criteria:

(i) Awards shall be reviewed using blind scoring and a review committee that is composed of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity.

(ii) A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

~~(iii) Applications for awards shall include a commitment to make at least 15 percent of qualified community development investments to a qualified community development entity with the assistance of a nonprofit organization as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this clause, the following shall apply:~~

~~(I) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.~~

~~(II) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.~~

~~(iv)~~

(iii) Priority shall be provided to both of the following:

(I) Applications that commit to addressing the hardest to serve and undercapitalized lower income populations.

(II) Applications that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state. These applications shall demonstrate how their investment activity provides a scalable economic development model.

(D) For applications described in subparagraphs (A) and (B), applications for awards shall include a commitment to make at least 15 percent of qualified community development investments to a qualified community development entity with the assistance

of a nonprofit organization as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this subparagraph, the following shall apply:

(i) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(ii) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.

~~(D)~~

(E) (i) For applications described in subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, RTCA shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, RTCA shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

~~(E)~~

(F) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify RTCA within 30 calendar days of such transfer

and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

~~(F)~~

(G) Within 200 calendar days of RTCA sending notice of certification, the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph ~~(E),~~ *(F),* shall provide RTCA with evidence of the receipt of the cash investment within 205 calendar days of the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* does not receive the cash investment and issue the qualified equity investment within 200 calendar days of RTCA sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to RTCA for certification. Lapsed certifications revert back to RTCA and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ *(E)* under the annual allocation limitation of forty million dollars ($40,000,000) in paragraph (4) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

~~(G)~~

(H) A qualified community development entity that issues qualified equity investments shall notify RTCA of the names of taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to RTCA that provides documentation as to the investment of at least 85 percent of the funds being deployed within one year in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph ~~(C)~~ *(D)* of paragraph (5).

~~(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply to reinvestments of redeemed qualified low-income investments.~~

~~(v)~~

(iv) Any other information required by RTCA as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to RTCA during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(viii) Any other information requested by RTCA.

(e) (1) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(3) The credit allowed under this section may be in addition to any credit allowed under Section 45D of the Internal Revenue Code.

(f) RTCA shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Franchise Tax Board shall have access to any documentation held by RTCA relative to the application and reporting of a qualified community development entity.

(2) A qualified community development entity shall provide RTCA with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualified community development entity, pursuant to this section. RTCA shall provide this information to the Franchise Tax Board in a manner determined by the Franchise Tax Board.

(h) (1) The credit authorized by this section shall only be allowed for those taxable years for which moneys are appropriated to RTCA to administer the California New Markets Tax Credit pursuant to 18410.3 for that taxable year. The appropriation shall specifically identify the California New Markets Tax Credit.

(2) For those taxable years for which those moneys are appropriated pursuant to paragraph (1), RTCA shall post notice of the appropriation on the homepage of its Internet Web site and send notice of such appropriation to the Secretary of State and the Legislative Counsel.

(i) This section shall be repealed on December 1, 2022.

SEC. 4. Section 18410.3 is added to the Revenue and Taxation Code, to read:

18410.3. (a) The California New Markets Tax Credit Fund is hereby established in the State Treasury.

(b) Upon annual appropriation, moneys in the fund shall be used for the purposes described in subdivision (d) of Section 12283, subdivision (d) of Section 17053.9, and subdivision (d) of Section 23622.9.

SEC. 5. Section 23622.9 is added to the Revenue and Taxation Code, to read:

23622.9. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 12283, and Section 17053.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-sized businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. RTCA shall administer this program as provided in this section, Section 12283, and Section 17053.9.

(b) (1) For taxable years beginning on or after January 1, 2017, and before January 1, 2022, and subject to subdivision (h), there shall be allowed as a credit against the "tax," as defined in Section 23036, in an amount determined in accordance with Section 45D of the Internal Revenue Code, relating to the new markets tax credit, as modified in this section.

(2) For the purposes of this section, "RTCA" means the Responsible Tax Credit Administrator, as designated by the Governor.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for "(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates" with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code, relating to qualified community development entity, is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code, relating to special rules for certain organizations, is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term "qualified active low-income community business," as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting "any low-income community in California" for "any low-income community" every place it appears in Section 45D of the Internal Revenue Code.

(B) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (i) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary tenant of the real estate leased from the first business.

(C) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph. This requirement does not apply to a business that is located on land and is controlled by, or under common control with, a federally recognized tribe.

(D) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a nonmetropolitan area, with a median family income that does not exceed 60 percent of median family income for this state, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(E) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(F) A qualified active low-income community business shall not include a sexually oriented business. A “sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance. “Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(G) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 12283, and Section 17053.9 shall be forty million dollars ($40,000,000) per calendar year. The allocation of any undesignated qualified equity investments shall be returned to RTCA by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to RTCA on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with clause (ii) of subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against the annual or the cumulative limit.

(B) The references to "the Secretary" in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read "RTCA."

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code, relating to credit recapture amount, is modified to substitute "Section 19101 of this code" for "Section 6621."

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(i) The qualified community development entity fails to comply with subparagraph ~~(C)~~ *(D)* of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit.

(ii) RTCA shall establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(iii) Recaptured qualified equity investments revert back to RTCA and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(D)~~ *(E)* of paragraph (5) of subdivision (d) by the annual allocation limitation.

(II) Thereafter, in accordance with the application process.

(iv) Enforcement of each of the recapture provisions shall be subject to a six-month cure period.

(d) (1) RTCA shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation, monitoring, and management of the tax credit program authorized by this section.

(2) (A) RTCA shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. RTCA may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines, RTCA shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments, including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph ~~(C)~~ *(D)* of paragraph (5).

(4) (A) Subject to subdivision (h), RTCA shall begin accepting applications on or before May 15, 2017, and shall award authority to designate qualified equity investments annually through ~~2022.~~ *2021.*

(B) In the instance where RTCA determines that an application is incomplete, the qualified community development entity shall be given five business days to provide the omitted information.

(5) (A) In the 2017 awards cycle, RTCA shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (2) of subdivision (c) in the order applications are received by RTCA. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2018 to ~~2022~~ *2021* award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the discretion of RTCA, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) RTCA shall award up to 40 percent of the authority to designate qualified equity investments in the 2018 to ~~2022,~~ *2021*, inclusive, award cycles, to qualified community development entities on a competitive basis that meets the following criteria:

(i) Awards shall be reviewed using blind scoring and a review committee that is composed of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity.

(ii) A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

~~(iii) Applications for awards shall include a commitment to make at least 15 percent of qualified community development investments with the assistance of a nonprofit organization as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this clause, the following shall apply:~~

~~(I) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.~~

~~(II) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is~~

~~focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.~~

~~(iv)~~

(iii) Priority shall be provided to both of the following:

(I) Applications that commit to addressing the hardest to serve and undercapitalized lower income populations.

(II) Applications that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state. These applications shall demonstrate how their investment activity provides a scalable economic development model.

(D) For applications described in subparagraphs (A) and (B), applications for awards shall include a commitment to make at least 15 percent of qualified community development investments to a qualified community development entity with the assistance of a nonprofit organization as documented by a cooperation agreement that states the terms and conditions of that assistance. For the purposes of this subparagraph, the following shall apply:

(i) A qualified community development entity shall be certified under Section 45D of the Internal Revenue Code but has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(ii) A nonprofit organization shall meet all of the following requirements: Is tax exempt under Section 23701, is registered with the Registry of Charitable Trusts, which is administered by the Attorney General, has articles of incorporation or articles of organization that state the primary mission of the organization is focused on improving the economic well-being of low-income communities or individuals, and has bylaws that provide that the organization maintains accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization.

~~(D)~~

(E) (i) For applications described in subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, RTCA shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, RTCA shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

~~(E)~~

(F) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify RTCA within 30 calendar days of such transfer and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

~~(F)~~

(G) Within 200 calendar days of RTCA sending notice of certification, the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph ~~(E),~~ *(F),* shall provide RTCA with evidence of the receipt of the cash investment within 205 calendar days of the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph ~~(E),~~ *(F),* does not receive the cash investment and issue the qualified equity investment within 200 calendar days of RTCA sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to RTCA for certification. Lapsed certifications revert back to RTCA and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph ~~(F)~~ *(E)* under the annual allocation limitation of forty million dollars ($40,000,000) in paragraph (4) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

~~(G)~~

(H) A qualified community development entity that issues qualified equity investments shall notify RTCA of the names of taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to RTCA that provides documentation as to the investment of at least 85 percent of the funds being deployed within one year in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph ~~(C)~~ *(D)* of paragraph (5).

~~(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply to reinvestments of redeemed qualified low-income investments.~~

~~(v)~~

(iv) Any other information required by RTCA as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to RTCA during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(viii) Any other information requested by RTCA.

(e) (1) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(3) The credit allowed under this section may be in addition to any credit allowed under Section 45D of the Internal Revenue Code.

(f) RTCA shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Franchise Tax Board shall have access to any documentation held by RTCA relative to the application and reporting of a qualified community development entity.

(2) A qualified community development entity shall provide RTCA with the name, address, and tax identification number of each investor and entity for which a qualified equity investment

was designated by the qualified community development entity, pursuant to this section. RTCA shall provide this information to the Franchise Tax Board in a manner determined by the Franchise Tax Board.

(h) (1) The credit authorized by this section shall only be allowed for those taxable years for which moneys are appropriated to RTCA to administer the California New Markets Tax Credit pursuant to 18410.3 for that taxable year. The appropriation shall specifically identify the California New Markets Tax Credit.

(2) For those taxable years for which those moneys are appropriated pursuant to paragraph (1), RTCA shall post notice of the appropriation on the homepage of its Internet Web site and send notice of such appropriation to the Secretary of State and the Legislative Counsel.

(i) This section shall be repealed on December 1, 2022.

SEC. 6. For the purposes of complying with Section 41 of the Revenue and Taxation Code, the Legislature finds and declares as follows:

(a) Specific goals, purposes, and objectives: attract private sector investment in lower income communities in California.

(b) Performance indicators:

(1) Amount of qualified low-income community investments issued.

(2) Amount of dollars deployed in qualified low-income community investments.

(3) Number of operating businesses assisted as a result of qualified low-income community investments.

(4) Number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of those positions.

(c) Data collection requirements and baseline measurements:

(1) The baseline measurements include:

(A) The amount of tax credits issued in the year.

(B) The unemployment rate of the area.

(C) The poverty rate of the area.

(2) Data to collect includes:

(A) The amount of tax credits issued in the year.

(B) The number of operating businesses in a low-income community assisted.

(C) The number of jobs created and retained as a result of qualified low-income community investments.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

O